IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT :

THE HONOURABLE MR. JUSTICE P.R.RAMAN
&
THE HONOURABLE MR. JUSTICE V.K.MOHANAN

THURSDAY, THE 13TH SEPTEMBER 2007 / 22ND BHADRA 1929

AFA.No. 19 of 1998()

AGAINST THE JUDGEMENT OF THIS COURT IN AS.560/1996 Dated 26/02/1998
(IA.NO.205/91 IN OS.353/78 OF THE SUB COURT, PALAKKAD)
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APPELLANT/APPELLANT/6TH RESPONDENT IN IA.:

LEELA ALIAS LAKSHMIKUTTY AMMA, W/O.VISWANATHA MENON, KAMBALATH HOUSE, MANNALUR POST, ALATHUR TALUK.

BY ADV. SRI.K.K.MOHAMED RAVUF
SRI.C.S.ANANTHAKRISHNA IYER (SR.)
SRI.SAJAN VARGHEESE K.

RESPONDENTS/RESPONDENTS/DEFENDANTS & PLAINTIFFS:
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1. RADHAMMA, D/O.KALLIYANIKUTTY AMMA, MARUTHARODE AMSOM AND DESOM, CHANDRA NAGAR, PALAKKAD TALUK.

2. NANDINI, D/O.RADHAMMA, RESIDING AT -DO- -DO-

3. SADANANDAN, S/O.RADHAMMA, -DO- -DO-

4. PREMAKUMARAN, S/O.RADHAMMA, -D0- -DO-

5. SIVAKUMAR, S/O.RADHAMMA, -DO- -DO-

6. SARASWATHI, D/O.RADHAMMA, -DO- -DO-

7. KALYANIKUTTY AMMA, D/O.PARUKUTTY, KOONAM AMSOM, PALAKKAD TALUK **(DIED)**

8. THEYYUNNI NAIR, S/O.KALYANIKUTTY AMMA, VADAPAZHANI, TAMIL NADU.

9. GOPALAN NAIR, S/O.KALYANIKUTTY AMMA, PERUR, COIMBATORE, TAMIL NADU.

10. SANKARANARAYANAN, TOTTAKKARA AMSOM DESOM, OTTAPALAN TALUK.

11. SREEKUMARAN, S/O.RADHAMMA, MUNNAR, IDUKKI DIST.

12. MEENA, D/O.DEVAKI AMMA, KOPPAM AMSOM, KALMANDAPAM, PALAKKAD DIST.

(IT IS RECORDED THAT 7TH RESPONDENT KALYANIKUTTY AMMA IS DEAD AND ALL HER LEGAL REPRESENTATIVES ARRE ALREADY ON THE PARTY ARRAY WHO ARE RESPONDENTS 1 TO 6 AND 8 TO 11, AS PER ORDER DTD.11/1/2000 ON MEMO IN AFA.19/98)

R1 TO R6 & 11 BY ADV. SRI.P.N.KRISHNANKUTTY ACHAN(SR.)
R12 BY ADV. SRI.V.CHITAMBARESH
ADDL.R2 & R3 BY ADV . SRI.T.C.MOHANDAS
SRI.A.R.GANGADAS
SMT.ANJU GOVIND
SMT.S.CHITHRA
SRI.T.M.SUNIL

THIS APPEAL FROM FIRST APPEAL HAVING BEEN FINALLY HEARD ON 13/09/2007, THE COURT ON THE SAME DAY DELIVERED THE FOLLOWING:

P.R.RAMAN & V.K.MOHANAN, JJ.

A.F.A.NO.19 OF 1998

Dated this the 13th day of September, 2007

JUDGMENT

Raman, J.

A "not pressed memo" is filed by the appellant in the above appeal and prays the appeal be dismissed as withdrawn. While granting the said prayer, if there is any interim order passed, necessarily they have to be vacated so that the position be restored as on the date of filing the appeal.

2. In the circumstances, this appeal is dismissed as withdrawn as per memo dated 5/9/2007. All the interim orders are vacated. Parties shall maintain the status quo as on the date of filing of the appeal. It is open to the parties to agitate their claim, if any, based on the decree passed, before the trial court.

3. In this connection the learned counsel appearing for additional respondents 2 and 3 in C.M.P.No.3599/98 brought to our notice of an order dated 24th November, 1999 in CMP.No.3599/98 in CMP.No.2737 in AFA.No.19/98 passed by this Court by which a Receiver was appointed for the two plots, A1 and A29 in Ext.C2 plan.

In respect of those two plots a claim was made by the additional respondents 2 and 3 in the above CMP, who were however not parties in any of the earlier proceedings or in the appeal. But this Court, after referring to the rival submissions, in paragraph 4 stated as follows:

> " But we do not think that it is necessary to adjudicate on these matters at this stage finally. The relevant question can be considered at the time the appeal is finally disposed of. But we think that meantime, it is necessary to preserve the two plots, A1 and A29 in Ext.C2 plan. We think in the circumstances that it will be just and convenient to appoint a Receiver for the two plots."

4. This Court also directed to take possession of all the plots including plots A1 and A29 other than plots A28 and A31, which were involved in the appeal. Therefore, one among the petitioners was appointed as Receiver for Plots A1 and A29 and directed to take possession of the said plots without prejudice to the contentions of all the parties before this Court. Petitioner No.5 Sivakumar was appointed as a Receiver for plots A1 and A29 in Ext.C2 plan and directed him to take possession of those plots and report that fact to this Court.

5. Since the appeal is sought to be withdrawn as not pressed, there will not be any adjudication on the rival submissions made by the parties as contemplated by the interim order. In the circumstances, status quo anti

on the date of passing of the order has to be restored. We do so. In so far as plots A1 and A29 are concerned, the respective contention of the parties is left open to be agitated before the court below at the appropriate stage.

6. The receiver appointed as per the above order shall restore possession to respondents 2 and 3 in the said C.M.P. The Receiver shall however submit his account for the profit, if any, taken during the period of Receivership to the court below and after hearing the parties, the court below shall pass appropriate orders discharging him after being satisfied of the said accounts.

P.R.RAMAN,
Judge.

V.K.MOHANAN,
Judge.

kcv.